



8011-01p
SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-70520; File No. SR-NYSEARCA-2013-94]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend The NYSE Arca Equities Schedule Of Fees And Charges For Exchange Services Regarding Calculation Of The Mid-Point Passive Liquidity Order Tier September 26, 2013.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 17, 2013, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the “Fee Schedule”) regarding calculation of the Mid-Point Passive Liquidity (“MPL”) Order Tier. The Exchange proposes to implement the fee change on October 1, 2013. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding calculation of the MPL Order Tier.⁴ The Exchange proposes to implement the fee change on October 1, 2013.

Under the MPL Order Tier, MPL Orders that provide liquidity to the Exchange receive a credit of \$0.0020 per share for Tape A, B and C Securities. As specified in the Fee Schedule, the MPL Order Tier currently applies to ETP Holders, including Market Makers, that execute an average daily volume ("ADV") of MPL Orders during the month that is 0.0775% or more of U.S. consolidated ADV ("CADV").⁵ For all other fees and credits, Tiered or Basic Rates apply based on a firm's qualifying levels.⁶

⁴ See Securities Exchange Act Release No. 69926 (July 3, 2013), 78 FR 41154 (July 9, 2013) (SR-NYSEArca-2013-67). A Passive Liquidity ("PL") Order is an order to buy or sell a stated amount of a security at a specified, undisplayed price. See Rule 7.31(h)(4). An MPL Order is a PL Order executable only at the midpoint of the Protected Best Bid and Offer. See Rule 7.31(h)(5).

⁵ U.S. CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape and excludes volume on days when the market closes early.

⁶ For ETP Holders that do not satisfy the MPL Order Tier threshold, an MPL Order that provides liquidity receives a credit of \$0.0015 per share for Tape A, B and C Securities.

The Exchange proposes to specify that the 0.0775% threshold includes only MPL Orders that provide liquidity, whereas the Fee Schedule currently specifies that it includes executed MPL Orders, which could also include MPL Orders that remove liquidity. For example, if U.S. CADV during a month is 6.5 billion shares across Tapes A, B and C, an ETP Holder would need to execute an ADV of at least 5,037,500 shares of providing MPL Orders during the month in order to qualify for the applicable MPL Order Tier credit of \$0.0020 per share, in which case the ETP Holder's executions of MPL Orders that provided liquidity would receive a credit of \$0.0020 per share for Tape A, B and C Securities. Under this example, an ETP Holder that executed an ADV of less than 5,037,500 shares of providing MPL Orders during the month would not qualify for the MPL Order Tier and, therefore, the ETP Holder's executions of MPL Orders that provided liquidity would receive a credit of \$0.0015 per share for Tape A, B and C Securities.

The proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other

A \$0.0030 fee applies to MPL Orders in Tape A, B and C Securities that remove liquidity.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable because the proposed specification would result in the MPL Order Tier threshold relating only to volume that provides liquidity, which would be identical to the type of volume to which the corresponding credit would apply. The Exchange also believes that the proposed change is reasonable because the MPL Order Tier and corresponding credit of \$0.0020 per share would continue to incentivize ETP Holders to submit additional MPL Orders that provide liquidity on the Exchange. This would continue to increase the liquidity available on the Exchange and, therefore, potential price improvement to incoming marketable orders submitted to the Exchange. In this regard, MPL Orders allow for additional opportunities for passive interaction with trading interest on the Exchange and are designed to offer potential price improvement to incoming marketable orders submitted to the Exchange.⁹ The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because the MPL Order Tier would continue to be available to all ETP Holders to qualify for and would apply equally to providing MPL Orders from all ETP Holders in all Tape A, B and C Securities traded on the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁰ the Exchange does not believe that the

⁹ See, e.g., Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460, 58461 (October 3, 2006) (SR-PCX-2005-53).

¹⁰ 15 U.S.C. 78f(b)(8).

proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would continue to encourage competition, including by attracting additional liquidity to the Exchange, which would continue to make the Exchange a more competitive venue for, among other things, order execution and price discovery. All ETP Holders have the ability to submit MPL Orders, and ETP Holders could readily choose to submit additional liquidity-providing MPL Orders in order to qualify for the MPL Order Tier. The Exchange does not believe that the proposed change will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹¹ of the Act and subparagraph (f)(2) of Rule 19b-4¹² thereunder, because it establishes a due, fee, or

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹³ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2013-94 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2013-94. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

¹³ 15 U.S.C. 78s(b)(2)(B).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2013-94 and should be submitted on or before [INSERT DATE 21 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2013-24011 Filed 10/01/2013 at 8:45 am; Publication Date: 10/02/2013]

¹⁴ 17 CFR 200.30-3(a)(12).